

HOUSE BILL 2142

By Hill T

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 8 and Title 12, relative to government
contracts with and investments of assets in
companies that boycott Israel.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 12, is amended by adding the following
as a new chapter:

12-13-101. As used in this chapter:

(1) "Boycott Israel":

(A) Means refusing to deal with, terminating business activities with, or
otherwise taking any action that is intended to penalize, inflict economic harm on,
or limit commercial relations specifically with Israel, or with a person or entity
doing business in Israel or in an Israeli-controlled territory; and

(B) Does not include an action made for ordinary business purposes;

(2) "Company" means a for-profit sole proprietorship, organization, association,
corporation, partnership, joint venture, limited partnership, limited liability partnership, or
limited liability company, including a wholly owned subsidiary, majority-owned
subsidiary, parent company, or affiliate of those entities or business associations that
exists to make a profit;

(3) "Governmental entity" means a state agency or political subdivision of this
state; and

(4) "State agency" means each state board, commission, department, executive
department or office, institution, and instrumentality.

12-13-102. A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it:

- (1) Does not boycott Israel; and
- (2) Will not boycott Israel during the term of the contract.

SECTION 2. Tennessee Code Annotated, Title 8, is amended by adding the following as a new chapter:

8-51-101. As used in this chapter:

- (1) "Boycott Israel" has the same meaning as defined in § 12-13-101;
- (2) "Company" has the same meaning as defined in § 12-13-101;
- (3) "Direct holdings" means all securities of a company that are held directly by the Tennessee consolidated retirement system or in an account or fund in which the Tennessee consolidated retirement system owns all shares or interests;

(4) "Indirect holdings":

(A) Means:

(i) All securities of a company held in an account or fund, such as a mutual fund, managed by one (1) or more persons who are not officers, directors, board members, or employees of the Tennessee consolidated retirement system; or

(ii) All securities of a company held in an account or fund in which the Tennessee consolidated retirement system owns shares or interests together with other investors not subject to this chapter; and

(B) Does not include money invested under a plan described by Section 401(k) or 457 of the Internal Revenue Code of 1986; and

(5) "Listed company" means a company listed by the treasurer pursuant to § 8-51-106.

8-51-102. With respect to actions taken in compliance with this chapter, including all good faith determinations regarding companies as required by this chapter, the treasurer, and

any officer, director, board member, and employee of the Tennessee consolidated retirement system, are exempt from any conflicting statutory or common law obligations, including any obligations with respect to making investments, divesting from any investment, preparing or maintaining any list of companies, or choosing asset managers, investment funds, or investments for the securities portfolios of the Tennessee consolidated retirement system.

8-51-103. In a cause of action based on an action, inaction, decision, divestment, investment, company communication, report, or other determination made or taken in connection with this chapter, the state shall, without regard to whether the person performed services for compensation, indemnify and hold harmless for actual damages, court costs, and attorney's fees adjudged against, and defend, any official or employee of the state, or any officer, director, board member, or employee of the Tennessee consolidated retirement system.

8-51-104.

(a) Notwithstanding any law to the contrary, no person or entity may bring any civil, criminal, or administrative action against this state, its officers, employees, or agents, or against the Tennessee consolidated retirement system, its officers, directors, board members, employees, or agents for any action, inaction, decision, divestment, investment, company communication, report, or other determination made or taken in connection with this chapter.

(b) If a civil action or proceeding is nevertheless commenced by any person or entity against any official or employee of the state, or against any officers, directors, board members, or employees of the Tennessee consolidated retirement system for any action, inaction, decision, divestment, investment, company communication, report, or other determination made or taken in connection with this chapter, the person or entity shall be liable for paying the costs and attorney's fees of a person sued in violation of subsection (a).

8-51-105. The treasurer and any officers, directors, board members, or employees of the Tennessee consolidated retirement system may rely on a company's response to a notice or communication made under this chapter without conducting any further investigation, research, or inquiry.

8-51-106.

(a) The treasurer shall prepare and maintain, and provide to the members of the council on pensions and insurance, a list of all companies that boycott Israel. In maintaining the list, the treasurer may review and rely, as appropriate in the treasurer's judgment, on publicly available information regarding companies, including information provided by this state, nonprofit organizations, research firms, international organizations, and governmental entities.

(b) The treasurer shall update the list annually or more often as the treasurer considers necessary, but not more often than quarterly, based on information from, among other sources, those listed in subsection (a).

(c) No later than thirty (30) days after the date the list of companies that boycott Israel is first provided or updated, the treasurer shall submit the list to the speaker of the senate, the speaker of the house of representatives, the governor, and the attorney general and reporter, and post the list on a publicly available web site.

8-51-107. No later than thirty (30) days after the date the treasurer prepares or updates the list pursuant to § 8-51-106, the treasurer shall notify the members of the council on pensions and insurance of the listed companies in which the Tennessee consolidated retirement system owns direct holdings or indirect holdings.

8-51-108.

(a) For each listed company identified on the list maintained pursuant to § 8-51-106, the treasurer shall send a written notice informing the company of its status as a

listed company and warning the company that it may become subject to divestment by the treasurer.

(b) The notice shall offer the company the opportunity to clarify its Israel-related activities and shall encourage the company, no later than ninety (90) days after the date the company receives notice under this section, to cease boycotting Israel in order to avoid qualifying for divestment by the treasurer.

(c) If, during the time provided by subsection (b), the company ceases boycotting Israel, the treasurer shall remove the company from the list maintained under § 8-51-106 and this chapter will no longer apply to the company unless it resumes boycotting Israel.

(d) If, after the time provided by subsection (b) expires, the company continues to boycott Israel, the treasurer shall sell, redeem, divest, or withdraw all publicly traded securities of the company, except securities described by § 8-51-110, according to the schedule provided by § 8-51-109.

8-51-109.

(a) The treasurer shall comply with the following schedule when selling, redeeming, divesting, or withdrawing publicly traded securities of a company continuing to boycott Israel:

(1) At least fifty percent (50%) of those assets shall be removed from the Tennessee consolidated retirement system's assets no later than one hundred eighty (180) days after the date the company receives notice under § 8-51-108 or subsection (b) unless the treasurer determines, based on a good faith exercise of its fiduciary discretion and subject to subdivision (a)(2), that a later date is more prudent; and

(2) One hundred percent (100%) of those assets shall be removed from the Tennessee consolidated retirement system's assets no later than three hundred sixty (360) days after the date the company receives notice under § 8-51-108 or subsection (b).

(b) If a company that ceased boycotting Israel after receiving notice under § 8-51-108 resumes its boycott, the treasurer shall send a written notice to the company informing it that the treasurer will sell, redeem, divest, or withdraw all publicly traded securities of the company according to the schedule in subsection (a).

(c) Except as provided by subsection (a), the treasurer may delay the schedule for divestment under subsection (a) only to the extent that the treasurer determines, in the treasurer's good faith judgment, and consistent with the treasurer's fiduciary duty, that divestment from listed companies will likely result in a loss in value or a benchmark deviation described by § 8-51-111(a). If the treasurer delays the schedule for divestment, the treasurer shall submit a report to the speaker of the senate, the speaker of the house of representatives, the governor, and the attorney general and reporter stating the reasons and justification for the treasurer's delay in divestment from listed companies. The report shall include documentation supporting the treasurer's determination that the divestment would result in a loss in value or a benchmark deviation described by § 8-51-111(a), including objective numerical estimates. The treasurer shall update the report every six (6) months.

8-51-110. The treasurer is not required to divest from any indirect holdings in actively or passively-managed investment funds or private equity funds. The treasurer shall submit letters to the managers of each investment fund containing listed companies requesting that they remove those companies from the fund or create a similar actively or passively-managed fund with indirect holdings devoid of listed companies. If a manager creates a similar fund with

substantially the same management fees and same level of investment risk and anticipated return, the treasurer may replace all applicable investments with investments in the similar fund in a time frame consistent with prudent fiduciary standards but no later than four hundred fifty (450) days after the date the fund is created.

8-51-111.

(a) The treasurer may cease divesting from one (1) or more listed companies only if clear and convincing evidence shows that:

(1) The treasurer has suffered or will suffer a loss in the hypothetical value of all assets under management by the treasurer as a result of having to divest from listed companies under this chapter; or

(2) An individual portfolio that uses a benchmark-aware strategy would be subject to an aggregate expected deviation from its benchmark as a result of having to divest from listed companies under this chapter.

(b) The treasurer may cease divesting from a listed company as provided by this section only to the extent necessary to ensure that the treasurer does not suffer a loss in value or deviate from its benchmark as described by subsection (a).

(c) Before the treasurer may cease divesting from a listed company under this section, the treasurer shall provide a written report to the comptroller of the treasury, the speaker of the senate, the speaker of the house of representatives, the governor, and the attorney general and reporter setting forth the reason and justification, supported by clear and convincing evidence, for deciding to cease divestment or to remain invested in a listed company.

(d) The treasurer shall update the report required by subsection (c) semiannually, as applicable.

(e) This section does not apply to reinvestment in a company that is no longer a listed company.

8-51-112. Except as provided by § 8-51-111, the treasurer shall not acquire securities of a listed company.

8-51-113. No later than January 5 of each year, the treasurer shall file a publicly available report with the speaker of the senate, the speaker of the house of representatives, the governor, and the attorney general and reporter that:

(1) Identifies all securities sold, redeemed, divested, or withdrawn in compliance with § 8-51-109;

(2) Identifies all prohibited investments under § 8-51-112; and

(3) Summarizes any changes made under § 8-51-110.

8-51-114. The attorney general and reporter may bring any action necessary to enforce this chapter.

SECTION 3. This act shall take effect October 1, 2018, the public welfare requiring it.